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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted]14

HAROLD BECK KESLER, APPELLANT,

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

BRIEF OF APPELLANT

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 539

HAROLD BECK KESLER, APPELLANT

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

BRIEF OF APPELLANT

OPINION BELOW

(a) The citation of the official report of the opinion delivered in the court below is 187 Federal Supplement, 277.

JURISDICTIONAL STATEMENT

(b) This is an appeal from a three judge decision of the United States District Court for the District of Utah (R. 11) denying injunctive relief against the enforcement of the Utah Safety Responsibility Act alleged to be unconstitutional because

it conflicts with the Bankruptcy Act. The case was tried to a district court of three judges pursuant to 28 USCA, section 2281. The statute believed to confer jurisdiction of this appeal is 28 USCA, section 1253 (Act of June 25, 1948, C 646, 62 Stat. 926). The judgment sought to be reviewed was filed August 30, 1960. The notice of appeal was filed September 28, 1960. Probable jurisdiction was noted January 16, 1961 (R. 25).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

(c) The following Constitutional provision, federal statute and state statute are involved in this case:

Article I, section 8, clause 4, of the Constitution of the United States grants to Congress the power:

> To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

Section 17 of the Bankrupcty Act, 11 USCA 35 provides:

> "(a) A discharge in bankrupcty shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bank-

rupt, unless such creditor had notice or actual knowledge of the proceedings in bankrupcty; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankrupcty due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment."

The state statute believed to be in conflict with the Bankruptcy Act is known as the Utah Safety Responsibility Act, Title 41, Chapter 12, Volume 5, Utah Code Annotated, 1953. The particular sections here involved are 41-12-13, 41-12-14, 41-12-15, and 41-12-17, which are quoted below:

41-12-13

"Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment

"If the judgment debtor named in any certified copy of a judgment reported to the commission is a nonresident, the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the judgment debtor is a resident."

41-12-14

"(a) The commission, upon the receipt of a certified

copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

"(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility."

41-12-15

"Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

"A discharge in bankrupcty following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act."

41-12-17

"(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payments of the installments.

"(b) The commission shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of finanical responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

"(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commission shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this act."

QUESTION FOR REVIEW

(d) The question presented for review is whether the Utah Safety Responsibility Act which provides (1) for the permanent suspension of a judgment debtor's driver's license only upon the written request of the judgment creditor and his attorney, (2) for judgment creditor control of the restoration of such license, and (3) that a discharge in bankrupcty shall not relieve the judgment debtor from any of the requirements of the act, conflicts with section 17 of the Bankrupcty Act. (11 USCA 35) and is therefore unconstitutional.

STATEMENT OF THE CASE

(e) The facts in this case are stipulated (R. 9-11).

Judgments against the appellant were entered in a state district court for injuries sustained as a result of the appellant's negligence in the operation of an automobile. In accord-

ance with the Utah Safety Responsibility Act, hereinafter referred to as the "Utah statute," section 41-12-13, Utah Code Annotated, 1953, (quoted above Pages 3-5) the judgment creditors requested the Clerk of the Court to forward to the Utah Department of Public Safety certified copies of such judgment. Thereupon the department acting in accordance with the provisions of the statute suspended the appellant's license to operate a motor vehicle in Utah and suspended the registration of his automobile (R. 9).

At the time of the suspension of his driver's license, the appellant was engaged in operating a one-man automobile repair business and had been so engaged for several years. His work frequently requires the road-testing of vehicles which are left for repair and the suspension of his driver's license seriously impairs his ability to make a living (R. 10).

The appellant filed a petition in bankrupcty scheduling the judgments mentioned above. The claims so scheduled were provable claims and were discharged in bankrupcty (R. 9).

Shortly after the discharge, the appellant made a written demand upon the Department of Public Safety for revocation of the suspension upon the ground that the judgment upon which the suspension was based had been discharged under the Bankruptcy Act. The department declined to revoke the suspension, pointing out that section 41-12-15 of the Utah statute specifically provides that a discharge in bankrupcty shall not relieve the judgment debtor from any of the requirements of the Act (R. 10).

The appellant filed a petition in the United States District Court attacking the validity of the Utah statute upon the ground that it conflicts with section 17 of the Bankrupcty Act, and

violates Article I, Section 8 of the Constitution of the United States which grants to the Congress the power to establish laws on the subject of bankruptcies. The prayer was for the restoration of the driver's license and the vehicle registration certificate (R. 3). The petition was denied by a three judge court (R. 23).

ARGUMENT

(f) The appellant contends:

1. The bankrupcty court has jurisdiction to enforce its judgment.

2. The Utah statute conflicts with section 17 of the Bankrupcty Act.

3. The bankrupcty power is "unrestricted and paramount" and state statutes in derogation thereof are void.

THE BANKRUPTCY COURT HAS JURISDICTION TO ENFORCE ITS JUDGMENT.

This is a proceeding in the bankrupcty court to enforce by injunction its judgment of discharge in bankruptcy. It is clear that a federal court of equity has such jurisdiction.

Local Loan Co. v. Hunt, 292 U.S. 234, 54 S. Ct. 695, 78 L. ed. 1230 (1934)

U. S. Migshell, 273 F 2d 682 (10th Cir.) (1959)

Reitz v. Mealey, 34 F. Supp. 532 (D.C.N.D. New York) (1940).

In Local Loan Co. v. Hunt, this Court held:

> "That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled . . . (292 U.S. 239). These principles apply to proceedings in bankruptcy." (292 U.S. 240).
>
> * * * *
>
> "What has now been said establishes the authority of the bankruptcy court to entertain the present proceeding, determine the effect of the adjudication and order, and enjoin petitioner from its threatened interference therewith." (292 U.S. 241). (Page references added).

In the case of U. S. v. Migshell, supra, the United States Court of Appeals, Tenth Circuit, affirmed the issuance of an injunctive order restraining the Director of Internal Revenue from asserting against the bankrupts certain claims for penalties and interest.

In the case of Reitz v. Mealey, supra, a three judge court considered a motion to enjoin the Commissioner of Public Vehicles of New York from suspending a bankrupt's driver's license. In commenting upon the pleadings the court said:

> "It would have been more regular to proceed by petition in the bankruptcy proceeding as this 'action' is strictly a 'controversy' in bankruptcy, ancillary to the main proceeding; but since the difference is only one of form we will disregard it." (34 F. Supp. at p. 533).

In the present case the petition was filed in the bankrupcty proceeding to preserve and protect the fruits of the bankruptcy.

It is clear that under the principles stated in the cases cited

above this Court has jurisdiction of the controversy and authorty to grant the injunctive relief prayed.

THE UTAH STATUTE CONFLICTS WITH SECTION 17 OF THE BANKRUPTCY ACT.

Section 17 of the Bankrupcty Act, 11 USCA 35, provides:

> "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except . . . (exceptions not applicable).

The Utah statute attempts to deny to the bankrupt protection of the discharge with respect to judgments resulting from the negligent operation of a motor vehicle, by granting to the judgment creditor in such cases the right to control the suspension of a driver's license and certificate of registration of his vehicle. The effect of the statute is to make the Department of Public Safety a collection agent for the judgment creditor.

The following specific provisions of the statute make this abundantly clear.

1. The license and registration are not suspended until upon the written request of the judgment creditor or his attorney the clerk of the court sends to the commission a certified copy of the judgment (41-12-13).

2. The commission "shall forthwith suspend" the license and registration. (41-12-14).

3. If the "judgment creditor consents in writing" the suspension may be lifted for 6 months or until the consent is revoked. (41-12-14).

4. The suspension is permanent unless the judgment is satisfied or is paid to the amount of required insurance

($5,000 bodily injury to or death of one person, $10,000 for more than one, and $1,000 property damage). Bankrupcty does not relieve the judgment debtor. (41-12-15).

5. A judgment debtor may apply to a court for the privilege of paying in installments and thus get his license and registration restored. (41-12-17).

6. If the judgment debtor defaults on an installment payment the license and registration is again suspended. (41-12-17).

This Court considered a New York statute, in the case of Reitz v. Mealey, 314 U.S. 33, 62 S. Ct. 24, 86 L. ed. 21, (1941), which as amended, contained provisions almost identical to those set out above. The Reitz case involved a factual situation similar to the present case except that the New York statute, before amendment, required the Clerk to send a certified copy of the judgment to the commission, and the commission was required to suspend the driver's license. The judgment creditor had nothing to do with the matter.

The amendments of the New York statute in 1936 and 1939 brought the judgment creditor into the picture and provided for suspension only upon the filing of a certified copy of the judgment at the request of the judgment creditor, and for the restoration of the license, upon consent in writing of the creditor or six months or as long thereafter as the consent remained outstanding. The amendments and the Utah statute are practically identical. The three judge court declined to grant injunctive relief upon the following reasoning:

> "However, we need not pass on the constitutionality of either of the amendments, for it is well settled in New York, as elsewhere, that a statute itself consti-

> tutional, is not affected by an unconstitutional amendment; the amendment is brutum fulmen and drops out as though never passed . . . " (34 F. Supp. 532 at p. 535).

The case was appealed to this Court and was affirmed by a 5 to 4 decision. The Court reached its conclusion by eliminating from consideration the amendments of doubtful validity. However, the Court said: (314 U.S. at p. 38)

> "A more serious question arises in connection with section 17 of the Bankruptcy Act. The discharge of the debtor is a defense available against a suit on the judgment and against execution process issued upon it. And there is force in the argument that 94-b, as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the State or makes that public policy subservient to the private interest of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim."

It will be noted that the majority opinion admits "there is force in the argument that section 94-b, *as amended,* in truth deprives the debtor of the immunity afforded by his discharge." As indicated above the Utah statute under attack is substantially the same as the New York amendments.

In a dissenting opinion by Mr. Justice Douglas, concurred in by Mr. Justice Black, Mr. Justice Byrnes and Mr. Justice Jackson, it is said:

> "Under the New York scheme a creditor whose claim has been discharged still holds a club over his debtor's head. The state has given him a remedy which survives bankruptcy. If the bankrupt refuses to pay his discharged debt, the creditor will see to it that his driver's

license is suspended. If, however, the bankrupt will pay up, the creditor will refrain.

"The practical pressures of this collection device are apparent. Where retention of the operator's license is essential to livelihood, as here alleged, the bankrupt is at the creditor's mercy. Bankruptcy is not then the sanctuary for hapless debtors which Congress intended. The bankrupt instead of receiving by virtue of his discharge 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt' (Local Loan Co. v. Hunt, 292 US 234, 244, 78 L. ed. 1230, 1235, 54 S Ct 695, 93 ALR 195, 24 Am Bankr. Rep (NS) 668) finds himself still entangled with a former creditor.

"In practical effect the bankrupt may be in as bad, or even worse, a position than if the state had made it possible for a creditor to attach his future wages. Such a device would clearly contravene the Bankruptcy Act. Local Loan Co. v. Hunt, supra. The present one likewise runs afoul of the Act."

It is interesting to note that the New York statute was repealed in 1941 and was reenacted with the creditor control features eliminated. Laws of New York, 1941, ch. 872.

The New York statute provided for suspension for 3 years. The Utah statute provides for *permanent suspension*, unless the judgment is paid to a certain amount, and makes the collection pressure many more times effective. As the obvious collection features are increased, the legitimate police power feature is minimized. We quote from the opinion of Judge Cooper in his dissenting opinion in the lower court in the case of Reitz v. Mealey, 34 F. Supp. 532 at p. 538:

"It is a transparent attempt by the State to provide a means by which the private citizen may, in violation of the bankruptcy laws of the United States, collect

his judgment in whole or in part from one and an unknown class of persons, viz., those licensed to operate a motor vehicle on those highways against whom a negligence judgment arising from the operation of such motor vehicle has been recovered and remains unpaid, which judgment is discharged under the bankruptcy laws or will be discharged.

"The statute expressly says that the license when suspended at the judgment creditor's discretion "shall remain so suspended * * * while any such judgment or judgments remain unstayed, unsatisfied and subsisting, either until said judgment or judgments are satisfied or discharged, *except by a discharge in bankruptcy*, to the extent * * * ."

"In other words it is an attempt on the part of the one state to withdraw from the Federal Government, for the benefit of a limited class of persons, a portion of the bankruptcy power delegated by the States to the Federal Government in the Constitution and thereby destroy the uniformity of the bankruptcy laws, so far as the State of New York is concerned. One of the functions of that Federal Power under the Constitution is to declare what judgments are dischargeable and to provide for their discharge.

"When the bankrupt is discharged from his debts under the Federal Bankrupcty Law, no state has power to make any sanctions or procedure by which a discharged judgment may nevertheless be collected under whatever guise that sanction or procedure may be dressed."

The Utah statute in its present form was enacted in 1951 (Laws of Utah, 1951, chapter 71). It is clear that the reasoning of the three judge court and this Court in the Reitz case cannot be followed here. The Utah statute must stand or fall, as written, because there are no amendments which can be eliminated in the consideration of the case to avoid the constitutional

question, nor are the parts of the Utah statute relating to suspension of the driver's license separable from the remainder.

Although the Utah statute contains a provision (section 41-12-40) to the effect that if any part or parts of the statute "shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts . . . ", the Supreme Court of Utah has held that such provision merely creates a presumption of separability. State v. Roberts, 92 Utah 204, 66 P. 2d 892 (1937). Patterick v. Carbon Water Conservancy District, 106 Utah 55, 145 P. 2d 503 (1944). But the presumption is not controlling if it appears that the legislature would not have enacted the statute without including the objectionable provisions. State v. Roberts, supra. Without the provisions under attack in this case the general intent of the Utah statute would be defeated because there would be no "teeth" provided for enforcement.

The conflict between section 17 and the Utah statute is evident. An injunction must issue to protect and preserve the rights granted to the petitioner by the Bankruptcy Act.

THE BANKRUPTCY POWER IS UNRESTRICTED AND PARAMOUNT AND STATE STATUTES IN DEROGATION THEREOF ARE VOID.

Article I, section 8, of the Constitution of the United States grants to the Congress the power:

> "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

The Supreme Court of the United States held in the case of International Shoe Co. v. Pinkus, 278 U.S. 261, 73 L. ed. 318 (1929):

"The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount. Const. Art. I, Sec. 8, Cl. 4.

" . . . The national purpose to establish uniformity necessarily excludes state regulation. * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act, or to provide additional or auxiliary regulations." (278 US at p. 265).

CONCLUSION

The Utah statute was obviously intended to and does keep a discharged judgment alive and enforceable at the election and discretion of the judgment creditor for the purpose of supporting the suspension of the driver's license and registration. The state has attempted by this legislaiton to enable creditors to apply pressure for the collection of judgments even though such judgments are discharged in bankrupcty. In substance and effect the state seeks to write an additional exception into section 17 of the Bankrupcty Act. That power rests exclusively with the Congress. The State statute in contravention of the Bankrupety act is therefore void and an injunction should be ordered.

Respectfully submitted,

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